

SHIP ARREST IN NORWAY

By Kyrre W. Kielland & Audun L. Bollerud*
Advokatfirma Ræder AS
kww@raeder.no
en.raeder.no
P.O. Box 2944, Solli, N-0230 Oslo, NORWAY
Tel: (+47) 23 27 51 57
Fax: (+47) 23 27 27 01



1. Please give an overview of ship arrest practice in your country.

Arresting a ship in Norway can be arranged quickly and at a reasonable cost. Norwegian courts do not require the claimant to provide any documents in original, and legal counsel does not need to present a POA from the claimant. Further, Norwegian courts rarely request translation of documents written in English or any of the Scandinavian languages.

In order to arrest a vessel under Norwegian jurisdiction, the claimant must submit an arrest application to a District Court with jurisdiction, i.e., the vessel's current port or the vessel's port of call. If the defendant is Norwegian, the claimant may also submit its arrest application to the District Court of the defendant's office or residence.

In order to arrest a vessel, several conditions for arrest must be proven upon a balance of probability. Most importantly, the claimant has to prove that it has a maritime claim against the shipowner as debtor. Norwegian law does not acknowledge actions against the vessel "in rem", and the arrest will not succeed unless the shipowner is also the debtor. Another peculiarity of Norwegian arrest law is that the claimant has to prove upon a balance of probability that it has a "reason for arrest". Pursuant to the Norwegian Dispute Act the court may only award arrest if the behavior of the debtor gives reason to fear that the enforcement of a claim would otherwise be made impossible or substantially more difficult, or if enforcement has to take place outside Norway. Consequently, the court has discretionary power to deny an arrest petition if there is no "reason for arrest". The courts will usually consider the arrest petition on the basis the claimant's writ of claims without a defence reply or a hearing, as time will often be of major importance. If the application succeeds, the courts will notify the local enforcement authorities, which will secure that the ship does not leave the harbor, and that the arrest is reported to the ship register. The shipowner may subsequently request a hearing to dispute the claim or the "reason for arrest", and in case of wrongful arrest, claim damages from the other party.

2. Which International Convention applies to arrest of ships in your country?

Norway is a party to the 1952 Arrest Convention, which is incorporated into Norwegian law through the Norwegian Maritime Code and the Norwegian Dispute Act. Norway has reserved its rights in accordance with Art 10 (b). Norway is signatory to, but has not yet ratified the 1999 Arrest Convention. We do not expect Norway to ratify the 1999 Arrest Convention in the near future.

3. Is there any other way to arrest a ship in your jurisdiction?

There is really no alternative to the normal procedures for arrest of ships. However, Norwegian flagged vessels may be subject to so-called "register arrest", where the arrest is registered as an encumbrance in the ship register, but without physically seizing the ship. Although normally not as effective as a physical arrest, this might be an option e.g. if the claim is not a maritime claim, as this will provide some security against the owner's legal dispositions of the vessel.

Further, it might reduce the claimant's exposure to liability for wrongful arrest as the vessel will still be able to sail.

Finally, the claimant may file for arrest of bunkers or cargo if it does not have a maritime claim against the owner and therefore is unable to arrest the ship as such. This may have effect until the bunkers or cargo is loaded off the ship.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

With the exception of freezing orders related to bankruptcy proceedings, no. However, a vessel may serve as security for a claim in other ways than arrest. One possibility is by way of liens or mortgages, which may also give the creditor the right to enforcement. Such security can be based on contract or by statute, or more commonly when considered as an alternative to arrest, by order of the enforcement courts.

The general right of detention/retention may also give security for a claimant in physical possession of the vessel, e.g. the yard's right to detain the vessel in its docks until its claims have been paid in full.

5. For which types of claims can you arrest a ship?

According to the Maritime Code section 92, a ship can only be arrested if the claim is a maritime claim. The definition of "maritime claim" in the Norwegian Maritime Code section 92 includes all maritime claims listed in the 1952 Arrest convention article 1(1), with the addition of claims for compensation after wreck removal.

6. Can you arrest a ship irrespectively of her flag?

Yes. Norwegian courts will also recognize maritime liens established in accordance with the law of the flag.

7. Can you arrest a ship irrespectively of the debtor?

No. Norwegian law does not acknowledge action "in rem", and as a general rule the owner of the ship has to be the debtor of the maritime claim (with the exception for certain maritime liens).

8. What is the position as regards sister ships and ships in associated ownership?

As a general rule, the maritime claim must be related to the ship. Nevertheless, and as allowed for under the Arrest Convention, the Norwegian Maritime Code section 93 allows for sister ship arrest as long as the vessels have the same legal entity as direct owner. It is not possible to arrest ships with associated ownership, e.g. two ship owning companies with the same holding company.

9. What is the position as regards Bareboat and Time-Chartered vessels?

In principle, this does not affect the possibility of taking arrest. As mentioned above, an arrest will only be granted if the debtor is also the owner of the ship. The charterer therefore has to respect an arrest award related to claims against the shipowner. The claimant, on the other hand, may not file for arrest on basis of a claim against the charterer, unless the ship owner is deemed jointly liable. Bunker invoices issued "to the charterer and/or vessel and/or owner" (or similar wording) will normally not be regarded as a claim against the shipowner in this respect.

10. Do your Courts require counter-security in order to arrest a ship?

Section 33-3 of the Norwegian Dispute Act empowers the courts with discretion to grant arrest subject to the claimant depositing counter-security. The security is fixed at the courts discretion based on the potential liability in case of a wrongful arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No. Section 92 (2)(q) of the Norwegian Maritime Code exempts maritime liens from the definition of a maritime claim, and theoretically it is not possible to arrest a ship on basis of maritime liens. Nevertheless, a claim secured by a maritime lien will normally be within the definition of a maritime claim and thus serve as basis of an arrest on that basis.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, maritime liens are recognized under Norwegian law. The provisions on maritime liens are found in the Maritime Code section 51, and are similar to those found in the 1967 Maritime Lien Convention although Norway is not a signatory.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Advokatfirma Ræder will be able to arrange for arrest of a vessel in any Norwegian port within 24 hours after receiving necessary documentation by e-mail.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Norwegian courts will not require claimant's legal counsel to present a POA. We normally advise claimants to submit copy of written evidence, e.g. copy of invoice, claims letter etc. This increases the chance of a successful arrest, as in most cases the claimant must prove the substantive claim on a balance of probabilities. Evidence in languages other than English, Norwegian, Swedish or Danish, may have to be translated.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Norwegian courts do not require any documents to be submitted in original, notarised or legalized. The arrest petition, however, has to be signed by the claimant or its legal counsel and delivered to court by hand or regular mail. In practice however, the arrest petition including evidence will be filed electronically to the court online (limited to a few courts), by e-mail or facsimile for the court's immediate attention.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, unless the parties have entered into a legal and valid agreement on venue or arbitration, the arrest court will accept jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

There are several procedures to release a ship from arrest. Firstly, a release may be requested against payment or security for the claim being basis for the arrest award. Secondly, release may be sought by disputing the arrest award by requesting a subsequent hearing on either the substantive claim, or the claimant's "reason for arrest", or both. It normally takes some time to obtain a release on basis of disputing the arrest award, unless the shipowner is able to provide evidence of an obviously wrongful arrest. Thirdly, the arrest will lapse one month after the claimant has obtained an award on the substantive claim, unless the claimant has taken legal steps in order to enforce the judgment. If not released yet, the arrest will lapse once the claimant has been awarded an enforcement lien for its substantive claim.

18. What type of security needs to be placed for the release?

Norwegian courts only accept cash deposit and unconditional bank guarantees issued by a Norwegian financial institution.

19. Does security need to cover interest and costs?

The security has to cover the full amount of the claim including interest and costs, provided that interest and costs are included in the claim.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Norwegian courts do not accept LOUs as security for lifting an arrest. Claimants, however, may accept LOUs from reputable P&I clubs as sufficient security to agree to lift the arrest.

21. How long does it take to release the ship?

The vessel will be released immediately upon the lapse or lifting of the arrest. The time it takes from an arrest award to actual release depends on which alternative release procedure is applied. Normally the ship should be allowed to sail within hours following evidence of security. In case the ship owner decides to contest the arrest, it may take weeks and even months.

22. Is there a procedure to contest the arrest?

Yes, the defendant may request a hearing in which he may contest the claim or the claimant's "reason for arrest".

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The defendant can request the courts to fix a time-limit by which the claimant must institute legal proceedings. If no such time-limit has been fixed by the court, the period will be one year from the issue of the arrest order. If proceedings are not instituted within the time-limit, the arrest order will be quashed. The court may, at its own discretion, extend the one-year time limit upon request by the claimant.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. Pursuant to section 32-11 of the Norwegian Dispute Act, the claimant may be held strictly liable for all of the defendant's economic loss if the claim did not exist at the time of arrest. The same applies if the claimant by negligence or intent has given wrongful or misleading information regarding the "reason for arrest".

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

As a general rule, the shareholders of a company with limited liability will not be personally liable for the obligations of the company. Pursuant to the Norwegian Limited Liability Companies Acts section 17-1, however, the company's Directors, general manager and shareholders may be held liable in damages in case of own or contributory negligence or wilful misconduct. In addition, and although there is no legal precedence yet, the Norwegian Supreme court has in previous cases stated that piercing and lifting the corporate veil cannot be ruled out "in exceptional circumstances".

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

When a ship has been arrested, the owner does no longer have legal rights to dispose of the ship. On the other hand, an arrest does not give the claimant the legal rights to dispose of the ship or seek enforcement in and to the ship. Consequently, enforcement is subject to a final award on the merits of the substantive claim and thereafter proper enforcement proceedings. However, the courts can agree to a sale “*pendente lite*” if the arrest holder requests it, and it is necessary to avoid substantial decrease in the value of the ship.

**Kyrre W. Kielland has, inter alia, extensive experience with financing and other transactions within shipping, aviation and real estate. He regularly provides advice within contract law, maritime law and insurance law (including liability insurance).*

Prior to joining Ræder as partner in 2014, Mr. Kielland worked as senior associate (No: senioradvokat) with Kluge Advokatfirma. By his secondment with Eksportkreditt Norge AS in 2012/2013, he gained precious experience with export financing. Mr. Kielland wrote his master thesis as research assistant with the University of Oslo, Department of Private Law, where he graduated as Master in Law in 2008.

Mr. Kielland has contributed to several Norwegian and international publications, and is regularly appointed external examiner for master students at the University of Oslo.